

DRAFT CHARGING LETTER

U.S. Department of State
Bureau of Political-Military Affairs
Directorate of Defense Trade Controls
Washington, D.C. 20520-0112

Mr. James M. Smith
President and Chief Executive Officer
EDO Corporation
60 East 42d Street (Suite 5010)
New York, NY 10165

Dear Mr. Smith:

The Department of State ("Department") charges that Respondent EDO Corporation (hereinafter "EDO," as successor to significant assets and aspects of the business of Condor Systems, Inc. (hereinafter "Condor"),¹ violated Section 38 of the Arms Export Control Act (the "Act") (22 U.S.C. 2778) and the International Traffic in Arms Regulations (the "Regulations") (22 CFR Parts 120-130) as described below. Forty-seven (47) violations are alleged at this time. The Department reserves the right to amend this charging letter, which may include specifying additional violations (see Section 128.3 of the Regulations).

PART I - RELEVANT FACTS

- (1) EDO is a corporation organized under the laws of New York and is a U.S. person within the meaning of Section 120.15 of the Regulations.
- (2) EDO is engaged in the business of manufacturing and exporting defense articles and defense services and is registered with the Department of State, Directorate of Defense Trade Controls² in accordance with Section 38 of the Act and Section 122.1 of the Regulations.
- (3) Condor is a corporation organized under the laws of California and is a U.S. person within the meaning of Section 120.15 of the Regulations.

¹EDO is named as the Respondent for the purposes of assessing civil liability and other remedies. Allegations of violations by Condor are attributed to EDO as Condor's successor.

² In February 2003, the former Office of Defense Trade Controls was realigned into the Directorate of Defense Trade Controls. References to the Directorate of Defense Trade Controls will be deemed to be to Office of Defense Trade Controls wherever applicable.

(4) Condor was engaged in the business of manufacturing and exporting defense articles and defense services until on or about July 26, 2002. Condor was registered with the Department of State, Directorate of Defense Trade Controls in accordance with Section 38 of the Act and Section 122.1 of the Regulations until on or about October 15, 2002.

(5) Forsvarets Materielverk (hereinafter "FMV") is the military procurement agency for the government of Sweden and the principal contractor for the manufacture of the A-17 submarine for the Swedish Navy. FMV is a foreign person within the meaning of Section 120.16 of the Regulations.

(6) Forsvarets Radioanstalt (hereinafter "FRA") is the communications security agency for the government of Sweden. FRA is a foreign person within the meaning of Section 120.16 the Regulations.

(7) Celsius Tech Naval Systems, AB (hereinafter "Celsius") is a private Swedish contractor for the manufacture of the Visby Corvette, a new class of surface vessel, for the Swedish Navy. Celsius is a foreign person within the meaning of Section 120.16 of the Regulations.

(8) In February 2001, Condor received a subpoena from the Federal Grand Jury for the U.S. District Court for the Northern District of California in connection with an investigation into possible violations of the Act and the Regulations arising from efforts to market a signal processing system to South Korea and Sweden.

(9) On November 8, 2001, Condor and its subsidiary CEI Systems, Inc. (hereinafter "CEI") filed voluntary petitions under Chapter 11 of the Federal Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of California.

(10) On July 26, 2002, EDO acquired substantially all of the business assets of Condor, including those of Condor's subsidiary CEI. As a result, EDO became the successor to Condor's business and, thus accountable for regulatory issues, including civil penalties for violations and other enforcement remedies, arising from the conduct of such business prior, as well as subsequent, to the acquisition.

(11) On January 8, 2003, the U.S. Attorney for the Northern District of California filed a felony information charging Condor with two counts of violating 18 U.S.C. 1001 for false statements in an application to the Department of State, Directorate of Defense Trade Controls for export of a signal processing system to Sweden.

(12) On February 18, 2003, pursuant to a plea agreement, Condor was adjudged guilty and convicted of the two violations charged in the information and sentenced to pay a \$1 million fine. The plea agreement does not affect in any way the right of the Department of State to institute administrative proceedings to impose a civil penalty or debarment against EDO as successor to Condor's business.

(13) EDO and the subject matter of this draft charging letter are subject to the jurisdiction of the United States and the Department of State, in particular with respect to the Act and the Regulations.

(14) In December 1995, the U.S. Navy contracted with Condor to develop an advanced Electronic Intelligence/Signal Reconnaissance System having the capability of performing Single Emitter Identification (SEI), i.e., "fingerprint" specific radar emission sources. A central element would be a signal processor, designated the SP-110, which would receive radar signal, isolate identifying properties of the signal and compare those properties to known signals, identify known radar platforms and save unknown signals to a library for later identification. The contract prohibited Condor from releasing technical information relating to SP-110 without the written consent of the U.S. Navy.

(15) On June 10, 1996, Condor received approval from the Department of State, Directorate of Defense Trade Controls, of an application dated April 18, 1996, for DSP-73 license number 81017 for a temporary export to permit demonstration and promotion to the Swedish Navy of the CS-3701, a tactical microwave surveillance system (test bed). This system is covered by Category XI of the United States Munitions List (USML) and designated as Significant Military Equipment (SME) in §121.1 of the Regulations. The license was subject to conditions or provisos that prohibited offering or discussing (a) software source code, operating algorithms or program maintenance documentation; (b) information or capabilities for RCS (radar cross section) simulation or modeling; (c) automatic detection and identification of complex signals such as spread spectrum, LPI (low probability of intercept) and FMOP (frequency modulation on pulse); (d) the rubidium timing standard; and (e) capability to control a jammer. The license did not authorize the offer or discussion of the U.S. Navy SP-110 as part of CS-3701 (which used a different signal processor) or any other system, and the license did not authorize release of any technical data concerning them.

(16) Subsequently, Condor engaged in marketing activities during which it discussed, offered, contracted to sell, and exported technical data (including some classified information) and defense services concerning, among other things, an electronic support measures or surveillance ("ESM") system using the U.S. Navy SP-110 signal processor referred to in paragraph 14 in violation of Navy contractual restrictions referred to in that paragraph, of the conditions of the license referred to in paragraph 15, and of provisions of the Act and the Regulations prohibiting exports of technical data and defense services without first obtaining required licenses or approvals. In addition, in applications to the Directorate of Defense Trade Controls for approval of technical assistance agreements and for amendments relating to defense services to implement sales contracts and in other export control documents, Condor made false statements concerning the technical characteristics of the signal processor system proposed for export and omitted material facts concerning its illegal marketing and export activities. These matters are described more fully in the following paragraphs.

(17) In November 1996, Condor received two Requests for Proposal from Sweden for electronic support systems for two programs. Both involved similar systems, one for Sweden's A-17 submarine and one for the Visby class surface ship.

(18) On January 8, 1997, Condor wrote a letter to the FMV, the Swedish Defense Ministry's procurement agency, indicating it would be bidding on Sweden's submarine electronic support or surveillance measures systems procurement. The letter stated that Condor would offer the "next generation system for submarine ESM applications...[and] will meet or exceed the functional and technical requirements of the [system] elements...." Among the listed critical elements were radar cross section and signal processing capability. The letter further stated that "The systems signal processor is a component of the U.S. Navy's latest submarine ESM system," an implicit reference to the SP-110 signal processor. Internal bid strategy documents prepared by Condor in March and April 1997 confirmed, among other things, that Condor intended to offer Sweden more than the requirements in the Requests of Proposals, including ability to control a jammer and SEI processing capable of handling complex signals. Thereafter, Condor implemented its bid strategy including by engaging in the activities described in the following paragraphs.

(19) Condor made a series of exports of technical data and/or provided defenses services to Sweden without the authorization required by the Act or the Regulations, including the following:

--On or about June 6 and 11, 1997, Condor provided Sweden technical data in responses to the Requests for Proposal.

--On or about July 25, 1997, Condor provided FMV technical data in responses to questions concerning those responses.

--From on or about August 18 to August 20, 1997, as well as August 25 to 26, 1997, and September 29 to October 9, 1997, Condor held technical interchange meetings with Sweden at which Condor provided Sweden technical data and technical assistance.

--On or about September 5, 10, 16, 1997, Condor provided technical data to Sweden, including in responses to FMV's and Celsius' questions arising from the technical interchange meetings.

--On or about October 24, 1997, Condor provided Sweden technical data in specifications supplementing its initial responses to the Requests for Proposal.

(20) The technical data (some of which was classified but not authorized for release by the U.S Department of Defense) and technical assistance related to, among other things, ESM system capabilities, including low radar cross section; the rubidium timing standard and frequency oscillator; handling of complex signals; and ability to control a jammer; SEI processing, hardware and signal processing methodology of the U.S. Navy's SP-110 signal processor.

(21) In an export control document provided to the Defense Security Service (DSS) (formerly Defense Investigative Service) in connection with the June 6 and June 11, 1997 transfers to Sweden of responses to Requests for Proposal, Condor omitted material facts, including that the responses contained (1) technical data that had not been authorized for export by the required license issued by the U.S. Department of State, (2) certain technical data that was classified, but not approved for release by, the U.S. Department of Defense; and (3) information, offers, and discussion in violation of conditions in license number 81017 and restrictions in the U.S. Navy contract.

(22) In an export control document provided to DSS on or about November 3, 1997, Condor falsely certified that that its June 1997 and October 1997 follow-up responses sent to Sweden contained only descriptive information not constituting technical data on the CS-3701 for which it had a license number 81017 to demonstrate and did not contain export controlled or U.S. classified information.

(23) In March and April 1998, Condor signed contracts with Sweden for ESM systems for both submarine and surface ship programs.

(24) On May 21, 1998, Condor submitted an application (TA 696-98) to the Department of State, Directorate of Defense Trade Controls for a Technical Assistance Agreement with FMV involving export, among other things, defense services and technical data for four ESM systems for Sweden's A-17 submarine. The application stated the project involved defense articles covered by USML Category XI and designated as Significant Military Equipment, and was valued at approximately \$5,940,000. The application contained materially false statements that characterized the SP-110 signal processor to be used in the ESM proposed for Sweden as different from the SP-110 processor that it was developing under contract for the U.S. Navy. Among other things, the application stated:

The U.S. Navy version is different from the one for the Swedish government because of USN requirements/specifications.

The COTS [Commercial Off the Shelf] version of the SP-110 uses current COTS software that is adapted to the customer's interface requirements and includes frequency agile signals processing. These changes are being made without consideration to the USN Programs. In other words, they are being developed in parallel and separately. A separate version and Part Number has been assigned to reflect this point.

In fact, the SP-110 proposed for Sweden was substantially the same as the one developed for the Navy and not approved by the U.S. Navy as an off-the-shelf product; the software for the SP-110 proposed for Sweden was not COTS, but based on identical code as the SP-110 developed for the Navy.

In addition, the application omitted material facts, including that Condor exported technical data and defense services without a license or other approval and offered, discussed or disclosed information in violation of license provisos or provisions of the Navy contract, as more fully set forth in paragraphs 18-23.

(25) On April 14, 1999, the Department of State, Directorate of Defense Trade Controls returned the application (TA 696-98) without action because, among other reasons, "This proposed ESM system [for Sweden's A-17 submarine] is comparable to a unique state-of-the-art ESM system that the U.S. Navy is developing for the USS Virginia Class (NSSM) Submarine that will not deploy until at least 2001" and that "The software used with the SP-110 is the same as that developed [by Condor] for...U.S. Navy... Programs."

(26) On December 7, 1999, after consultations between and among the Government of Sweden, the U.S. Navy and Condor, the Department of State, Directorate of Defense Trade Controls approved Condor's revised application (TA 696-98A), dated September 15, 1999, for a technical assistance agreement for defense services and technical data to support an ESM system for Sweden's A-17 submarine that would have a less capable signal processor and be subject to a condition that system software would be transferred to Sweden in government-to-government channels. The application stated the project involved defense articles covered by USML Category XI and designated as Significant Military Equipment, and was valued at approximately \$5,940,000. However, the revised application omitted material facts, including that Condor had exported technical data and defense services without a license or other approval and offered, discussed or disclosed information in violation of license provisos or provisions of the Navy contract, as more fully set forth in paragraphs 18-23.

(27) On December 21, 1999, the Department of State, Directorate of Defense Trade Controls approved Condor's application (TA 1625-99), dated September 24, 1999, for a technical assistance agreement for defense services and technical data to implement its contract to supply an electronic support system for the Visby class surface ship project, similar to the less capable system approved for Sweden's A-17 submarine. The application stated that the system was covered by Category XI of the United States Munitions List and is designated Significant Military Equipment, and was valued at approximately \$20,500,000. The application omitted material facts, including that Condor had exported technical data and defense services without a license or other approval and offered, discussed or disclosed information in violation of license provisos or provisions of the Navy contract, as more fully set forth in paragraphs 18 through 23.

(28) Condor submitted an application for a DSP-5 license number 772172, dated August 2, 1999, for the export of technical data to market the CS-5047 shipboard ELINT collection and analysis system to South Korea's Navy. During the review of the application, the Department of State, Directorate of Defense Trade Controls discovered, among other things, that Condor had previously provided marketing briefings to South Korea's Navy, including in December 1998 and in January and May 1999, and had submitted a proposal in response to a South Korean Navy request in June 1999; the briefings and proposal were made despite U.S. Navy guidance to Condor that an export

license should be obtained before any such briefing; the briefings and proposal apparently provided, without license authorization, technical data concerning the SP-110 and other defense articles. For this reason, the Directorate of Defense Trade Controls returned the application without taking any action and later referred the matter to the U.S. Customs Service for investigation. That investigation discovered the evidence of violations set forth in the preceding paragraphs.

PART II - REGULATORY REQUIREMENTS

The following provisions of the Regulations adopted pursuant to Section 38 of the Act are relevant to the charges:

(29) Part 123 of the Regulations requires persons intending to export defense articles, including technical data, to obtain a license or other approval from the Directorate of Defense Trade Controls.

(30) Part 124 of the Regulation requires persons intending to provide defense services to obtain the approval of the Directorate of Defense Trade Controls.

(31) Section 127.1(a)(1) of the Regulations provides that it is unlawful to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required without first obtaining the required license or written approval from the Directorate of Defense Trade Controls.

(32) Section 127.1(a)(4) of the Regulations provides that it is unlawful to violate any of the terms or conditions of licenses or approvals.

(33) Section 127.2 of the Regulations provides that it is unlawful to use any export control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which is license or approval is required.

PART III - THE CHARGES

As described more fully in paragraphs 1 through 28, the following violations are charged to Respondent EDO as successor to Condor:

Charges 1-4: Unlawful Exports of Classified Technical Data

(34) Respondent violated Section 38 of the Act and Section 127.1(a)(1) of the Regulations by exporting to Sweden defense articles, specifically classified technical data relating to an electronic support system, signal processor and other Significant Military Equipment in USML Category XI, without first obtaining the required approval from the Directorate of Defense Trade Controls.

Charges 5-15: Unlawful Exports of Unclassified Technical Data

(35) Respondent violated Section 38 of the Act and Section 127.1(a)(1) of the Regulations by exporting defense articles, specifically unclassified technical data relating to an electronic support system, signal processor and other Significant Military Equipment in USML Category XI, without first obtaining the required license or approval from the Directorate of Defense Trade Controls.

Charges 16-19: Unlawful Exports of Defense Services

(36) Respondent violated Section 38 of the Act and Section 127.1(a)(1) of the Regulations by furnishing to Sweden defense services relating to an electronic support system, signal processor and other Significant Military Equipment in USML Category XI (b) without first obtaining the required license or approval from the Directorate of Defense Trade Controls.

Charges 20-31: Violations of License Conditions

(37) Respondent violated Section 38 of the Act and Section 127.1(a)(4) of the Regulations by offering and discussing information in contravention of the conditions of license number 81017, including software source code, radar cross section, automatic detection and identification of complex signals, the rubidium timing standard, and capability to control a jammer.

Charges 32-34: False Statements

(38) Respondent violated Section 38 of the Act and Section 127.2 of the Regulations by using export control documents containing false statements for the purpose of exporting defense articles, including (1) a certification issued to DSS in November 1997 that falsely stated that Condor had provided Sweden only descriptive information not containing export controlled or U.S. classified information, and (2) an application for approval of a technical assistance agreement that contained false technical descriptions of (a) the signal processor and (b) the software involved in that application.

Charges 35-47: Omissions of Material Facts

(39) Respondent violated Section 38 of the Act and Section 127.2 of the Regulations by using export control documents, for the purpose of exporting defense articles and defense services, that omitted material facts. The documents included a classified material transmittal form issued to DSS in June 1997 that failed to disclose, among other things, that the documents transmitted contained technical data, some of which was classified, and had not been authorized for export by the required license issued by the U.S. Department of State. These documents also included applications for approvals of technical assistance agreements that failed to disclose, among other things, that Condor had made several unauthorized exports of classified and unclassified technical data and

defense services and had violated express conditions of license number 81017, as well as restrictions on the release of information under its contract with the U.S. Navy.

PART III - ADMINISTRATIVE PROCEEDINGS

(40) Pursuant to Part 128 of the Regulations, administrative proceedings are instituted against EDO as the successor to Condor for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment and/or civil penalties. The Assistant Secretary for Political Military Affairs shall determine the appropriate period of debarment, which shall generally be for a period of three years in accordance with Section 127.7 of the Regulations. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with Section 38(e) of the Act and Section 127.10 of the Regulations. The Department of State's decision to pursue one type of enforcement action does not preclude it or any other department or agency of the United States from pursuing another type of enforcement action.

Sincerely,

David C. Trimble
Director
Office of Defense Trade Controls Compliance